MARK GOTTLIEB

Speaker Pro Tempore
Wisconsin State Assembly

Testimony of Rep. Mark Gottlieb
Senate Bill 403
Assembly Committee on Urban and Local Affairs
February 12, 2008

Vice Chairman LeMahieu and members,

Thank you for the opportunity to testify on Senate Bill 403, relating to the property tax exemption for low-income housing.

In 2003, the Wisconsin Supreme Court decided *Columbus Park Housing Corporation v. City of Kenosha.* The case involved a dispute over whether the association was entitled to a property tax exemption under s.70.11(4), WI Stats. The courts agreed with the position of the City of Kenosha, that the "rent use" and "lessee identity" requirements do apply to residential property that is owned by non-profit organizations and leased to private individuals.

The Legislature enacted 2003 Act 195. That act exempted residential property owned by non-profit organizations from the lessee identity requirement, but not from the rent use requirement. Consequently, not-for-profit organizations that lease residential property must use all of the leasehold income for maintenance of the leased property and/or construction debt retirement. The act also mandated a Legislative Council committee be created to study the issue further.

In 2004, the Joint Legislative Council Study Committee on Tax Exemptions for Residential Property introduced 2005 AB 573, which was recommended for passage by the Assembly Urban and Local Affairs Committee. The bill was not enacted.

SB 403 attempts to resolve this issue only as it relates to one particular type of residential housing, that being residential property leased to low-income individuals. The key provisions of this proposal:

- Create a definition of "low-income housing" and defines "low-income housing" as any residential unit within a low-income housing project that is occupied by a low-income or a very low income person (as defined by federal law), or is vacant and only available to such persons, and

- Create a specific exemption from the property tax for "low-income housing" that is owned by churches and religious, educational and benevolent associations.

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- Amend the rent use requirement that applies to low-income property owned by religious, educational, or benevolent associations, to provide that leasing the property does not make it taxable if all the rental income is used for any of the following expenditures for the project property:

    - Maintenance.
    - Capital replacements.
    - Insurance premiums.
    - Project management.
    - Debt retirement.
    - Monies reserved for project-related purposes.
    - General and administrative purposes.
    - Social services and other resident services provided at the project.
    - Utilities.
    - Financing costs.
    - Any other expenditure related to preserving and managing the project.
    - Any other similar project-related expenditure.

- Allow up to 10 percent of the rental income from a project to be used for an expenditure on the list above at any other low-income project in Wisconsin that is under common control with that project.

- Allow any amount of rental income to be used for debt service for any other low-income housing project under common control and under the same mortgage as the project.

- Amend the 10-acre limitation that applies to low-income property owned by religious, educational, or benevolent associations. Specifically:
    - Specifies that property owned by a church, religious or benevolent association and used for low-income housing is not subject to the 10-acre limitation.
    - Allows that up to 30 acres of property within a municipality owned by a church, religious or benevolent association used for low-income housing may be tax exempt, and specifies that no more than 10 contiguous acres may be exempt.

- Require the owner of a low-income project to file an annual statement and provide information to the assessor specifying which units were occupied by low-income or very low-income people, and allows the assessor to require a property owner to submit additional information to prove the property qualifies as tax exempt.

This bill is a refinement of a provision of the omnibus budget motion approved by the Joint Finance Committee on a 16-0 vote. It was developed after extensive negotiations involving the Wisconsin Housing Preservation Corporation and local government interests.

Two amendments were added by the Senate. Senate Amendment 1 clarifies that:

1. The expenditures for which leasehold income derived from a low-income project may be used must be <u>reasonable</u>.
2. A low-income project is one in which at least 75% of the units are occupied by, <u>or vacant and available only to</u>, low-income or very low-income persons.

3. Each year the owner of the property housing a low-income housing project must submit a copy of an appropriate federal contract, if applicable.

The Senate adopted Senate Amendment 2 at the request of the Department of Revenue. It replaces language in the original bill that regarding retroactivity. The effect of the provision is to prevent an assessor from assessing property taxes against low-income properties that they "omitted" from taxation in either of the two years before the bill takes effect.

I respectfully ask that the members of this committee support Senate Bill 403 without any additional amendments that would broaden the scope of the bill. Thank you for the opportunity to testify before you today.

LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Assembly Committee on Urban and Local Affairs
Testimony of Senator Lena C Taylor
Senate Bill 403 – The LITE-House Act
Tuesday, February 12th, 2008

Honorable Representatives,

Thank you for hearing testimony today on Senate Bill (SB) 403—the Low Income Tax Exemption Housing Act (LITE-House Act). I am happy to join with Chairman Mark Gottlieb (R-Port Washington) on this important legislation to define the property tax exemption for low-income housing.

Rep. Gottlieb and I took up this issue in response to the Wisconsin Supreme Court's decision in *Columbus Park Housing Corporation v. City of Kenosha*. In the interim since the court ruling, there have been legislative attempts to clarify the exemption for different types of housing. In 2003, the Legislature and Governor enacted 2003 Act 195, which exempted residential property owned by non-profit organizations from the *lessee identity requirement*, but not from the **rent use requirement**. In the last session, AB 573 received committee approval in this house, but went no further in the process.

The LITE-House Act is a refinement of part of the omnibus budget motion that was approved by the Joint Finance Committee on a 16-0 vote this session. It was developed through extensive negotiations with the Wisconsin Housing Preservation Corporation and local government interests. While there have been attempts in the past two sessions to deal with the implications of the courts ruling, no legislative effort has drawn itself to completion on the issue of the *rent-use requirement*, **which is the most important piece of this legislation.**

The provisions of the LITE- House Act firmly establish legislative intent regarding the principles of our state's *rent use requirement*—most notably by defining what rent proceeds can be spend on in twelve key categories.

- Maintenance
- Capital replacements
- Insurance premiums
- Project management
- Debt retirement
- Project-related purposes
- General and administrative purposes
- Social services and other resident services provided at the project
- Utilities
- Financing costs
- Any other expenditure related to preserving and managing the project
- Any other similar project-related expenditure

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As you can see, these categories and surrounding statutory language will help to ensure that proceeds collected as rent by owners are turned back into the housing projects themselves, rather than be used to subsidize other operational costs. Your chairperson, Rep. Gottlieb, is far more qualified and experienced to discuss the finer points of the rent use requirement and technical parts of this bill. However, I would like to briefly emphasize two more important points.

1) The Act creates a definition of "low-income" in the housing law of this state. To date, that language has not existed. The Act uses the federal poverty guidelines of the Department of Housing and Urban Development for guidance in that definition.

2) That the Act is limited in scope and purpose. This bill does nothing more than clarify existing exemptions relating to low-income housing for low income or very low income persons. It does not, in any way, impact the tax exempt status of other types of housing. This point will be made clear by the Chairman, Legislative Council, and many others throughout the day. The LITE-House Act is not new law; it simply gives churches and other benevolent organizations the guidance they need to confidently follow current law as it affects low-income housing.

By better defining the scope of the existing exemption, the LITE-House Act will ensure that those groups engaged in "God's work"—providing housing to those most in need—are given an incentive to do so. With our state facing a housing crisis, a budget shortfall, and a stagnating economy, it is incumbent upon us to support private sector groups dedicated to serving the needy. Without even shifting the tax base, the LITE-House Act ensures that churches and other benevolent organizations are not penalized financially for their good works.

The LITE-House Act's narrow scope however should not be taken to suggest that it will have a narrow impact. This bill will help thousands of Wisconsin families find warmth and shelter. It will help churches and benevolent groups around our state in fulfilling their missions of good works. And it will help ensure that low-income housing is there for future generations.

Senate Bill 403, the LITE-House Act unanimously passed the State Senate in late January. Steps have been taken to amend the bill to address the concerns of municipalities and the Department of Revenue, as reflected in Senate Amendment 1 and 2. With these provisions and the intent of this legislation, I urge you to support this bill.

Thank you.

WHPC

Wisconsin Housing Preservation Corp

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DATE: February 12, 2008

TO: Members of the Wisconsin State Assembly

FROM: Wisconsin Housing Preservation Corporation (WHPC)

RE: Senate Bill 403

I. Executive Summary:

- Senate Bill 403 (SB 403) is intended to clarify and protect the tax-exempt status, which has come under attack since the Columbus Park Decision of 2003, of those non-profit owned properties that meet the federal definition of low & very-low income housing, which are providing homes for Wisconsin's neediest residents. For example, the Wisconsin Housing Preservation Corp (WHPC), the State's largest low & very-low income non-profit housing provider owns approximately 4,900 units in the State which house over 9,000 elderly, handicapped and family residents whose average income does not exceed $10,000 annually.

- Of key importance, under the provisions of SB 403, **existing law relating to property tax exemption for the vast majority of non-profits is not changing**. If a project is exempt now, it will remain exempt under the statute subject to its terms and definitions including those regarding "rent-use". SB 403 adds a federal definition of low & very-low income housing owned by non-profits; and for those non-profits that have projects which qualify under the low and very low income definition there is a listing of allowable uses of leasehold income (i.e., "rent-use"). **For those non-profits that do not qualify under this low & very-low income definition, they are neither better off nor worse off under SB 403. This bill is not about property tax exemption, it is primarily about clarifying "rent-use" for those projects that qualify as low & very-low income housing under federal regulations.**

- While there was often disagreement in the legislative study committee that convened subsequent to the Columbus Park Decision of 2003, as to whom and to what extent property tax exemption should apply, there was little disagreement with respect to the finite segment of existing federally assisted properties that house the low & very-low income residents of Wisconsin. Without the clarification and assurance that non-profit

- housing providers like WHPC will be able to secure and maintain property tax exemption for such properties, they will not be able to acquire, preserve, or maintain these properties. The failure to achieve such clarification and assurance will eventually lead to catastrophic consequences for the low & very-low income residents of Wisconsin, and to the communities within which they reside.

- The economic viability of the majority of the existing federally created low & very-low income projects, which are rent and income restricted, is very much dependent on their property tax exempt status. Without property tax relief, many of these existing properties would fail, ultimately losing their federal subsidy with the subsequent burden of dealing with the ensuing financial issues and housing problems of the residents falling on the municipalities. In the case of WHPC, where they have been able to pay for municipal services provided to the properties, they have done so. For example, in over 95% of the cases where WHPC has been granted tax exempt status, WHPC has been willing to negotiate the payment of a PILOT (Payment in Lieu of Taxes) with the host community.

- WHPC is a Wisconsin 501(c)(3) non-profit corporation originally created as a trust by the Wisconsin Housing and Economic Development Authority ("WHEDA") as a statewide housing entity with the capacity to preserve and maintain, in as many cases as possible, the existing low and very-low income properties that were created through federal programs. WHPC's Board of Directors is comprised of nine (9) individuals who are appointed by the Governor of the State of Wisconsin.

- WHPC's housing portfolio, as of December 31, 2007, is comprised of 88 of these projects, consisting of 138 properties in 90 Wisconsin communities and 47 of Wisconsin's 72 Counties. With the average household annual income of approximately $10,000, WHPC is providing homes for Wisconsin residents who have no other realistic housing alternatives. All of these projects were existing low & very-low income "at-risk" properties when acquired by WHPC.

II. Summary of Statutory Changes:

SB 403's changes to Section 70.11 of the Wisconsin Statutes will clarify property tax exempt status with respect to low & very-low income housing. In the past, providers like WHPC have been routinely granted property tax exempt status by the communities in which it owns projects. However, during the last few years it has become more common for communities to challenge this exempt status based on arguably ambiguous statutory language, amplified by the Columbus Park Decision in 2003 and subsequent legislative efforts to address the problem. To resolve these issues, SB 403 will accomplish the following:

- First and most importantly: This bill is not about property tax exemption, it is primarily about clarifying "rent-use" for those projects that qualify as low & very-low income housing under federal regulations. The existing statute for the majority of non-profits regarding property tax exemption is not changing. If a project is exempt now, it will

remain exempt under the statute subject to its terms and definitions including those regarding "rent-use". What the bill provides is the federal definition of low & very-low income housing owned by non-profits; and for those non-profits that have projects which qualify under the low and very low income definition, there is a listing of allowable uses of leasehold income (i.e., "rent-use"). For those non-profits that do not qualify under this low & very-low income definition, they are neither better off nor worse off under these changes.

- The statute is therefore clarified to provide that the limitations for the use of leasehold income for low & very low income housing as defined are further enumerated in these minor revisions to the statute. The present statute provides that all leasehold income must be used for maintenance of the leased property or construction debt retirement. This provision would remain in place for those non-profit residential properties that do not meet the definition of low & very-low income housing.

SEC 2 ?

- The statute is further clarified to make certain that non-profit organizations like WHPC, as providers of low & very-low income housing, are benevolent organizations entitled to property tax exempt status; and,

- The bill provides that any non-profit benevolent organization owning and operating low & very-low income residential housing shall not be subject to the 10-acre limitation but would be subject to a 30 acre limitation (i.e., the total acreage of tax exempt real estate cannot exceed 30 acres in any community, with no more than 10 acres contiguous). The existing limitation is 10 acres which is problematical in larger communities such as Madison and Milwaukee where as few as 2 or 3 projects can exceed the 10 acre limitation.

SB 403 will protect the tax-exempt status of those non-profit owned properties that meet the federal definition of low & very-low income housing, which are providing homes for Wisconsin's neediest residents.

III. Financial Significance of the Property Tax Exemption on WHPC:

With respect to the vast majority of the existing federal portfolio in the State, as well as that of WHPC's current projects, and those existing projects which will be acquired in the future, gross rental income is effectively capped by the (i) Department of Housing & Urban Development (HUD) and Department of Agriculture Rural Development (RD) limitations on increasing rent subsidies, and (ii) the inability of the impoverished residents to pay any more for rent.

As a result, the ability of WHPC to acquire, preserve and maintain this important and vital stock of existing low & very-low income housing for the State of Wisconsin is, in many instances, dependent on the right of WHPC to not pay property taxes, thus reducing the ongoing expenses of ownership. The costs of operating these projects is often considerably higher than conventional properties due to a variety of reasons not the least of which are the increasing costs to address needs of the residents themselves and the

escalating administrative expenses related to the increasing compliance mandates imposed by both federal and state agencies.

Without the financial resources that property tax exemption provides to help these properties remain viable, many of them would fail, thereby losing millions of dollars in federal subsidies, with that ultimate burden of support falling on the municipalities in which the residents reside.

In those cases where a project is financially capable of paying some amount towards the community's property tax assessment, WHPC has volunteered to enter into a PILOT agreement (Payment in Lieu of Taxes) with the community providing for the payment of a fair share for the services provided by that community to the WHPC apartment project (i.e., fire and police service, snow removal, etc.). To date, WHPC has entered into PILOT agreements in ninety-five (95%) of its projects that have been granted property tax exempt status.

IV. History & Purpose of Wisconsin Housing Preservation Corporation

- Wisconsin Housing Preservation Corp, ("WHPC") is a Wisconsin nonprofit corporation under Section 501 (c)(3) of the Internal Revenue Code. The predecessor to WHPC was the Wisconsin Housing Preservation Trust which was formed by WHEDA in 1994 with the mandate: to preserve the existing federally created housing across the State of Wisconsin which houses Wisconsin's poorest residents; and, to protect the millions of dollars in federal subsidies that come into the State for those purposes. WHPC's Board of Directors is comprised of nine (9) individuals who are appointed through a cooperative process between the board of the Wisconsin Housing and Economic Development Authority ("WHEDA") and the WHPC board with the final selections to be made by the Governor of the State of Wisconsin.

- The mission of WHPC (as well as its predecessor, the Wisconsin Housing Preservation Trust) is to purchase, renovate and preserve the aging federal (low & very-low income) housing portfolio in the State of Wisconsin. Without the efforts of WHPC, the availability of quality, affordable housing to the neediest of the needy in the State of Wisconsin will continue to be put in serious jeopardy due to diminishing resources because of the following primary factors:

  - Federal programs supporting low & very-low income housing are being eliminated or cutback;

  - Low & very-low income housing in certain areas of Wisconsin are no longer financially viable, physically deteriorating, or being converted to market-rate housing;

  - Owners of low & very-low income housing who developed the projects in the 1970's and early 1980's are unwilling/unable to dedicate the resources necessary to properly maintain and preserve these properties.

V. Overview of the WHPC Portfolio

The WHPC housing portfolio, as of December 31, 2007 consists of 88 projects with 138 properties in 90 Wisconsin communities and 47 of Wisconsin's 72 Counties. The portfolio is comprised of 4,897 apartment units, of which 3,016 are set aside for senior/disabled residents and 1,881 for families. The total resident population exceeds 9,000 persons and the average household annual income is less than $10,000.

The general geographic locations of the WHPC apartment units within Wisconsin are as follows:

South Central: 1,414
Southeast: 924
East Central: 695
Central: 576
West Central: 542
Northern: 460
Milwaukee County: 286

A. Profile of WHPC's senior/disabled housing units

WHPC owns 3,016 subsidized senior/disabled housing units. Approximately eighty percent (80%) of the residents are 55 and older and thirty-three percent (33%) of the residents are over the age of 80. The average age equals or exceeds 80 at many locations. Ninety percent (90%) of this population is female and lives alone. Average annual income is approximately $10,000 which puts these residents at or below the current Wisconsin poverty line for one-person households.

Like most senior groups, WHPC's senior housing residents include a high percentage of "frail seniors" with one or more physical or mental disabilities – hearing, sight, mobility, or cognitive/language impairments. Twenty percent (20%) of WHPC's senior/disabled housing residents are disabled adults who have rented a WHPC apartment because it is their best possibility for secure, well-kept affordable housing.

The following three factors emphasize the important role WHPC plays in providing affordable, clean safe housing for its senior and disabled residents:

- There are insufficient state resources to create and/or maintain non-licensed "supportive housing". For example, Wisconsin licensed nursing home beds have declined fifteen percent (15%) since 2000, even as the above-80 senior population has increased, and will continue to do so.

- The severe poverty of WHPC residents limits their options and access to care and housing.

- The isolation suffered by the residents because few, if any, have family members in a position to help them should they need greater care to maintain independence.

B. Profile of WHPC's family housing units

WHPC owns 1,881 subsidized family housing units, located in projects throughout the State.

These households average three persons each, with the most common household profile being a single mother with two children. Approximately eighty-five (85%) of WHPC's family households are headed by a female with the age range of 25-45. Projects with significant immigrant populations have a higher percentage of male dominated households.

WHPC's family household's average income is $9,500 annually which puts the household well under the poverty line. The family households exhibit disability rates of twenty percent (20%) affecting either the head of the household or a dependent.

TESTIMONY
BEFORE
THE ASSEMBLY COMMITTEE ON
URBAN AND LOCAL AFFAIRS

February 12, 2008

By
Wisconsin Community Action Program Association
(WISCAP)
Bob Jones,
Public Policy Director

In Support of
Senate Bill 403

Good afternoon. I am Bob Jones, the Public Policy Director for the Wisconsin Community Action Program Association.

WISCAP is the statewide trade association for Wisconsin's sixteen Community Action Agencies, and three single-purpose agencies: the Coalition of Wisconsin Aging Groups, the Foundation for Rural Housing and United Migrant Opportunities Services (UMOS). Community Action Agencies are private, not-for-profit organizations which provide services to help low-income families become self-sufficient. Among the many critical services they are engaged in to meet their mission is assistance in the provision of affordable housing.

I am testifying on behalf of our member organizations to urge the Committee's support for SB 403.

WISCAP's statewide network is committed to addressing the growing need for safe and affordable housing in Wisconsin. Our member agencies, in 2006, created or improved 227 housing units; own and operate just under 700 units of affordable housing and manage over 1, 150 units. Our member agencies assisted 190 households in becoming first-time homebuyers last year; they also counseled over 275 households in the prevention of mortgage defaults. CAAs actively participate in local 'continuum of care' programs designed to serve homeless populations and help them towards permanent housing; member agencies in various parts of the state operate transitional housing facilities; assist families with critical support services, and provide services to local shelters. And, through weatherization and other housing rehabilitation services, CAAs contributed to the increased local property values in the average community of over $360,000.

The issue of 'rent use' has bedeviled our desire to provide affordable housing for years. Since Act 195 was created in April 2004, restoring the over-arching property tax exemption for low-income housing, the language restricting use of rental income for very limited purposes has created a growing burden on the financial viability of low-income housing projects.

As one example, property tax exemption status has been denied to Couleecap, a local non-profit providing rental housing to very low income families. Couleecap developed eight units of very low income housing in 1998.

Most of the tenants in this property are at 30% or below the county median income. Initially, they were denied property tax exemption because the low income families in the units would not qualify as tax exempt entities. Act 195 fixed this problem. But, now, Couleecap's low-income housing project has been denied tax exemption through a severe limitation on the definition of how earned income can be used for maintenance of the project. Couleecap has used every penny of income on this project to support the project and its operation. Every unit is rented to very-low-income families. The project cannot afford to pay property taxes, yet is required to pay them. Because Couleecap includes in its accounting of actual expenses such items as insurance; utilities (water, sewer, electric, heat); and property management costs such as wage and fringe of staff who rent up the units, resolve tenant issues, and inspect units, the claim is made that the low-income rental housing is subject to property taxes. Every one of these legitimate expense items would be appropriate expenses under SB 403. Couleecap has been fighting this issue for ten years. They are currently planning to sell the affected units of affordable housing due to this restrictive interpretation of maintenance costs unless this issue is quickly resolved. The agency simply does not have the resources to continue to subsidize these units; since 1998, they have lost and have had to use $106,726 in corporate funds to subsidize the project. The units can break even if the agency does not have to pay property taxes.

The need for a more flexible approach to the use of rental income has never been a particularly contentious one, in and of itself. When this issue was discussed by the Special Legislative Council on Residential Property Tax Exemptions in 2004-05, there was almost unanimous agreement that, for low-income properties, the uses of rental income needed to be broadened. SB 403 does this.

Many of our member agencies' developments, as well as other non-profit developments across the state, are made possible on the thinnest of financial margins. Over the years, with shrinking federal and other resources to support these projects, the existing restrictions on use of rental income are forcing them to become financially untenable. As an example here, every project United Migrant Opportunities Services has funded through Section 35.60 provides a supportive service plan for the residents. This creates costs for staffing, day care, emergency food, clothing and transportation, and job counseling. UMOS has 4 such centers in Wisconsin and each one needs to spend its rental income more flexibly to meet this important obligation and keep its projects running.

Eventually, with no change, the only option available for many of these projects would be to sell the property and get out of the business or, in some cases, even foreclose. In some of these situations, the property could end up the responsibility of the local city or municipality and, in an irony, be back off the tax

rolls but with the added financial burden of the locality for maintaining the property. These options do nothing to help create or provide affordable housing.

SB 403 is not a perfect bill. The distinction between 'units' of low-income and 'properties' and the requirement to pay property taxes on low-income units in mixed-use properties, as a condition of allowing the more flexible rent-use, is needlessly burdensome and could have the effect of discouraging mixed-use housing, which is not the direction we should want to go with our affordable housing policy in Wisconsin. Nevertheless, non-profits will still have the option under SB 403 of claiming a deduction on their entire property if they choose to forego the more flexible rent use opportunities (in other words, maintain the status quo), so we feel this is something our members can live with at this time. We realize the art of legislating entails compromise.

Note

I would also like to mention, in passing, a concern of our members on a change made to the bill approved by the Senate. This is the seemingly innocuous addition of the word "reasonable" when identifying allowable expenditures for low-income housing: "... uses all of the leasehold income from the property for any of the following 'reasonable' expenditures directly related to the low-income housing project ..." We, obviously, have no problems with agreeing that expenditures should be reasonable. To our members providing low-income housing, it appears self-evident that expenditures should and will be reasonable. We certainly hope that the addition of this word, undefined, does not give local

assessors the idea that they can question or withdraw exemptions unfairly because they do not feel a particular expenditure is 'reasonable' or that they will require excessive documentation or proof from a not-for-profit that a particular expenditure is 'reasonable'. We are all in this together and it is to the benefit of all parties that communities provide affordable housing.

We urge passage of SB 403 and its quick implementation. We appreciate the efforts of the bill's sponsors to move this issue along. Thank you for the opportunity to provide these comments, and I'd be happy to answer any questions.

WHEDA

we do so you can.

Testimony in front of the Committee on Urban & Local Affairs
Chair: Mark Gottlieb
February 12, 2008 @ 1:00PM

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Representative Gottlieb and members of the Committee on Urban & Local Affairs, I want to thank you for giving the Wisconsin Housing and Economic Development Authority "WHEDA" the opportunity to testify on SB403.

I want to start out by thanking the Chairman and the other authors of this legislation for making some critical changes to SB403 as it went through the Senate. On WHEDA's recommendation, the bill was amended to address a serious problem relating to the set-aside requirement. As it was originally drafted, the income test created by this legislation would have required at least 75% of the total units be occupied by income qualified residents. Instead, we clarified the language to provide that 75% of the units be available for low income residents. Otherwise, this would have caused many low-income housing projects to lose exemption if they were having occupancy problems. Everyone involved agreed that WHEDA's recommendation to change the legislation better served the affordable housing community.

Additionally, WHEDA worked with the bill's authors to change the annual reporting requirement laid out by SB403. Originally, the bill used the same reporting requirements in place for Section 8 housing projects. Many other federal affordable housing programs use different reporting requirements that would not have met the test set out by the original draft of the legislation and therefore would have lost their property tax exemption. By inserting the phrase "if applicable", which WHEDA recommended and the authors agreed to, relating to the reporting requirements, the current bill avoided widespread confusion and disruption for both the non-profit owners and the local assessors. SB403 is better for the changes that WHEDA asked for and were accepted by the drafters.

However, WHEDA still has four concerns about the current version of SB403—concerns we shared with Chairman Gottlieb last Wednesday during a conference call with him.

Creation of an Income Test.

SB403 creates an income test. We expect that this test will become the tool by which local assessors will determine if a housing project is granted or denied tax exemption status. Let's be clear on this point; the income test established by SB403 is more restrictive than existing federal programs that finance affordable housing. Currently, WHEDA can finance affordable housing projects with tax-exempt bond financing that meet the following occupancy guidelines of: either 20% units set aside for households at 50% County Medium income or 40% units set aside for households at 60% County Medium income. These federally approved affordable housing projects, would on face value, be denied property tax exemption by SB403.

What are the ramifications, the unintended consequences, of implementing an income-test created by SB403.

For WHEDA, staff has identified approximately 30 consisting of over 1,100 affordable housing units that the Authority would have to assume would be subject to the property tax thanks to SB403. These are projects that have already received in excess of $38 million in financing from WHEDA. If subject to the property tax, these housing projects will suffer financial hardship due to the increased expense. Their ability to continue making mortgage payments to WHEDA will be compromised—damaging WHEDA's financial position and its ability to make payments to bondholders. Logically, WHEDA's bond rating will be adversely affected. The income test created SB403 adds uncertainty and instability to Wisconsin's affordable multifamily housing market at the very same time the single family housing market is under severe stress.

For the residents of these affordable housing projects that would likely lose their property tax exemption under the income-test implemented by SB403, rents would increase significantly.

WHEDA, using tax exempt bonds, financed a 58-unit development in Monona serving residents with mental illness and/or alcohol or other drug abuse issues. To qualify for our lending, the development must set-aside 20% of the units for occupancy by residents at or below 50% of county median income. The development is currently exempt from property taxes but would be added to the tax rolls based on the income test issue alone. Currently the average tenant contribution to rent is approximately $200 per month. Either the residents would need to increase their rent by another 50% (or $100) or the additional cost of full property taxes would destroy its operation.

For the most part, these are individuals or families on low, and in many cases, fixed income. Again, let's be very clear. Property tax exemption allows these projects to provide affordable rents to those in need. Without the exemption, the viability of these affordable units will be called into question.

Its not just WHEDA financed properties that will be negatively impacted by an income-test. Certain HUD and Rural Housing financed developments scattered throughout the state will be negatively impacted by SB403.

A too restrictive "rent-use" fix and the lack of a reasonable rate of return on investment

While we appreciate SB403's attempt to solve the "rent-use" issue, as currently drafted the bill doesn't allow non-profits to develop the financial resources needed to assure their ability to continue to produce or preserve affordable housing units. As part of the Governor's Task Force for Housing Preservation, WHEDA identified 831 properties providing over 35,000 affordable housing units that

are in jeopardy of losing their affordability, 7500 units during the next 12-24 months. To preserve enough of these units to continue providing quality affordable housing to those who need it—the elderly, the disabled, working families and so on—WHEDA will need a strong non-profit sector to partner with. SB403 unfortunately works at cross-purposes to that effort by not including a reasonable rate of return to the non profit owner in its definition of allowable expenses. Under this bill, non-profits will be unable to maintain or grow their capacity to acquire and preserve affordable housing.

The federal government realizes the necessity of allowing non-profits as well as other developers to generate a reasonable rate of return on investment. In most federal programs, non-profits are specifically allowed receive compensation for their affordable housing activities. SB403 would take Wisconsin in the other direction to the determent of the affordable housing community.

Compliance

SB403 raise serious compliance issues with significant unintended consequences.

Local assessors will be put in the position of having to determine property tax status on complicated affordable housing projects. They will be required to collect and analyze financial information from at least a significant number of residents of each affordable housing project under review.

Assessors will be forced to ascertain how every dollar of rental payments generated by these projects is spent. They will be forced to make a determination if the non-profit is spending it appropriately. And each assessor will have to be uniform in their determination or we risk significant uncertainty in the housing market where individual localities treat housing projects differently or worse yet, assessors treat the same project differently from year to year.

Be aware that to comply with the income-test established by SB403, many individuals residing in affordable housing projects will have to disclose sensitive personal financial information both to their landlords and to local assessors. This disclosure of personal information will cause grave concern for many of these residents.

Taxed-in-Part

Housing policy has moved away from "ghettoizing" those living in affordable housing projects. SB403, unintentionally, takes Wisconsin backwards toward "ghettoization" by putting up significant financial barriers to mixed-income housing projects. By taxing the market rate units of mixed-income housing projects, SB403 would in a real sense stymie the viability of existing developments as well as the creation of new housing projects.

Mixed-income developments allow the market-rate units to subsidize affordable housing units. By taxing the market rate units, the state is significantly reducing if not eliminating outright the financial viability of the mixed-unit project.

There are a significant number of mixed-use projects already in existence with current mortgages. Virtually every new deal WHEDA finances has a mixed income component. SB403 would put these projects at risk—risk to WHEDA and other entities that are providing financing to these properties, risk to the non-profits saddled with a non-performing project that might be foreclosed on, and finally risk to those residents who are living in the affordable units suffering through rent increases they can't afford.

Further recommendations from WHEDA

SB403, by creating a protected class of affordable housing developments, will ultimately put housing developments that do not meet the income-test established by the bill on the property tax roll. It will effect over thirty WHEDA financed developments with over

1,100 affordable units, as well as other non-profit housing projects, causing financial hardship. It will adversely affect countless households who rely on these units to provide affordable housing. These unintended consequences will ripple through the affordable housing market.

WHEDA suggests the following changes to SB403.

Creation a safe-harbor exemption for all WHEDA financed affordable housing projects owned and operated by non-profits. WHEDA's mission is to finance affordable housing properties. It seems that all the stakeholders involved in this process recognize the need to protect the "universe" of affordable housing projects and recognize that WHEDA is a key player in that task. WHEDA does not finance any of the more complicated, and ultimately more controversial elderly housing project/assisted living units that often place municipalities in a difficult position. One could conclude it that would be logical to provide a "safe harbor" for WHEDA financed projects owned and operated by non-profits. It would also serve to reduce the potential compliance burden on local assessors.

Or

A simple "rent-use" fix would address many of the compliance issues raised by this testimony. When the Columbus Park problem was first raised, the courts addressed only the lessee-identity question. We fixed that. Assessors then relied on the legislation's rent-use requirement as the basis to tax low-income developments. They apply a restrictive definition of maintenance and construction debt-retirement so that if even $1 of rent is spent to provide fire insurance to that very same housing project, the owners flunk the test and are added to the tax rolls. A simple rent-use fix definition would add clarity to the legislature's intent and stability to the housing market currently awash with uncertainty. I

would suggest that the Committee consider previous legislation introduced to address this issue.

Wisconsin Property Taxpayers, Inc.
P.O. Box 1493 Madison, WI 53701
608 255-7473 / 800 994-9784

Testimony In Opposition To 2007 Senate Bill 403

Good afternoon. I am Michael Birkley, Legislative Director for Wisconsin Taxpayers, Inc., a statewide lobbying organization representing the interests of more than 15, 500 residential, commercial and agricultural property taxpayers who believe that:

> Every private property owner should pay for government services related to the protection and use of their own property; and,
>
> No private property owner should be required to subsidize the services provided to any other private property owner.

Under current law, however, those who own taxable properties are required to subsidize services to certain tax-exempt private properties, including the residential properties owned by churches, religious and benevolent associations that are the subject of this bill.

According to the Department of Administration's biennial report Tax Exemption Devices, 2007-09, these tax-exempt residential properties represented about $3.5 billion of the $491.5 billion statewide private property value in 2005-06.

At minimum, these residential tax exemptions added $63.544 million to the statewide property tax bill in 2006. If these residential properties had been placed on the tax roll, the average effective tax rate would have declined from $18.36 to $18.17 per thousand dollars value; reducing the average city taxpayer's bill by $30 in 2005-06.

In 2005, counties and municipalities spent $5.2 billion on services related to the use and protection of property. If these properties had only been forced to pay for their fair share of the costs of the services provided to their properties it would have reduced the statewide property tax bill by $52 million or more.

Because this bill would expand, rather than reduce property taxpayer subsidies for services to tax-exempt housing properties, we strongly urge you to put this bill on hold. And search for a better, less taxing alternative to accomplish your objective.

We believe that state-mandated programs should be funded with state money, not property taxpayers' dollars. This bill mandates the removal of property from the local tax base.

At minimum, we would ask you to fully fund the cost of these and any future property tax exemptions the state may decide to grant with state revenues instead of property taxpayers dollars. Alternatively, we would encourage you to provide refundable state tax credits instead of property tax exemptions to the owners of residential properties targeted in this bill.

# # #

Wisconsin Association of Homes and Services for the Aging, Inc.

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February 11, 2008

To: State Representative Mark Gottlieb, Chair
Members, Assembly Urban and Local Affairs Committee

From: John Sauer, Executive Director
Tom Ramsey, Director of Government relations

Subject: Senate Bill 403-- A "Rent-Use" Fix Requested for All Non-Profit Residential Housing Providers

The Wisconsin Association of Homes and Services for the Aging (WAHSA) represents not-for-profit long-term care providers throughout the State who own, operate and/or sponsor nursing homes, assisted living facilities and HUD Section 202 Supportive Housing for the Elderly apartment complexes and offer over 300 community service programs ranging from Alzheimer's support, child and adult day care, home care and hospice to Meals on Wheels. WAHSA members employ over 38,000 individuals who provide compassionate care and service to over 45,000 elderly and persons with a disability in Wisconsin.

Senate Bill 403 is of particular concern to the over 8,000 tenants of the 92 senior housing apartment complexes WAHSA members operate. Their concerns are NOT with what SB 403 does: the bill clarifies and ensures that low-income housing remains exempt from property taxes. The concerns of those 8,000+ senior housing tenants, whose average age is 83.6 years old, are what SB 403 does **not** do.

Current law, under s. 70.11, Wis. Stats., prohibits tax-exempt property owners who lease a part of their property from using any of the leasehold income generated by that property for any purpose other than **maintenance and/or construction debt retirement**. This is referred to as the "**rent use**" leasehold income restriction. SB 403 would exempt low-income housing providers, and only low-income housing providers, from these "rent use" restrictions, allowing those providers to utilize their leasehold income to cover a variety of project costs other than maintenance and/or construction debt retirement. The remaining *Columbus Park* residential housing providers would not be afforded that opportunity under SB 403; they would continue to be prohibited from using leasehold income for any purpose other than maintenance and/or construction debt retirement. Included in that grouping are benevolent nursing homes, community-based residential facilities (CBRF), residential care apartment complexes (RCAC), adult family homes (AFH), "housing for older persons" affiliated with a not-for-profit nursing home, CBRF and/or RCAC, residential facilities for the treatment and housing of AODA clients, residential housing for persons with permanent disabilities, independent living centers, and some WHEDA mixed-use projects. While WAHSA members believe low-income housing providers deserve the SB 403 exemption from the Chapter 70 "rent use" restrictions, they also believe all residential housing providers deserve that same exemption.

WAHSA members, therefore, urge the members of the Committee to support an amendment to SB 403 which would maintain the SB 403 provisions exempting low-income housing providers from property taxation but would eliminate the "rent use" restrictions on all residential housing providers, including low-income housing providers. The amendment would permit all residential housing providers to use the leasehold income they generate for any purposes which would "further the benevolent or not-for-profit activities of the owner." The amendment only would address the "rent use" restrictions on residential housing providers; it would not alter the benevolence standards they must meet to remain exempt from property taxes.

It would be inaccurate for WAHSA members to state that if SB 403 were to pass in its current form, all other residential housing providers other than low-income housing providers would lose their tax-exempt status. However, as noted in the attached December 2007 *In Business: Madison* article, "The War to Remain Tax Exempt," some local assessors are challenging the tax-exempt status of some residential housing providers on the basis of how they expend their leasehold income. That is why SB 403 was introduced: to protect low-income housing providers from such scrutiny. If SB 403 in its current form were to pass, low-income housing providers would be spared further uncertainty in this area. But what about the other residential housing providers? If a local assessor is willing to challenge the tax-exempt status of a residential housing provider based on their use of leasehold income without the passage of any intervening legislation, as we are seeing today, why would that assessor refrain from assessing that property for property taxes if SB 403 were to pass? Indeed, wouldn't an assessor be expected to make the argument that the Legislature has determined only low-income housing providers warrant the exemption from the "rent use" restrictions and all other residential housing providers must adhere to those restrictions or face an assessment for property taxes? That, obviously, is the concern of the "other" residential housing providers and the reason we support amending SB 403.

Question: **Do you believe it is appropriate for long-term care organizations to use some of the leasehold income generated by their senior housing tenants to offset the MA losses of their campus nursing home?** Many organizations do just that; if SB 403 were to pass in its current form and assessors were to begin to strictly enforce the "rent use" restrictions, this practice either would be eliminated or the organization would face the loss of its property tax exemption. If this practice were to be eliminated, how many nursing homes might be forced to close and how might nursing home access be affected? If these organizations were to lose their tax-exempt status, how many tenants would suddenly become eligible for the Homestead tax credit and what impact would that have on the state budget?

Many long-term care organizations use a portion of the leasehold income generated by their senior housing tenants to establish a "benevolence fund" to ensure that tenants who run out of funds in their apartments or in the campus assisted living facility are not forced to leave (in fact, IRS Revenue Rulings prohibit s. 501 (c)(3) "homes for the aged" from discharging tenants who run out of funds unless the financial viability of the organization is threatened by this prohibition). If SB 403 were to pass in its current form, this practice also would be jeopardized. Is that the route we wish to take?

Please consider the compromise we offer which would benefit both low-income housing providers as well as all other residential housing providers.

The war to remain tax exempt

Why some nonprofits are losing tax-exempt status on residential properties

By Jessica VanEgeren

When Attic Angel Prairie Point, Inc. decided to build a senior living community in the city of Madison, it went through the typical steps required with any construction project. Like other developers, it first touched base with the city of Madison. Its reason, however, was different.

Attic Angel needed assurance that the project would be granted tax-exempt status, essentially freeing up hundreds of thousands of dollars for maintenance costs and to keep housing costs low.

"We were told it would be exempt, so we proceeded with the feasibility study, broke ground and started to market the project," said Mary Ann Drescher, the group's president. "Then we received word

INTERVIEWEES

Dave Cieslewicz
City of Madison

Michael Kurth
City of Madison

Mary Ann Drescher
Attic Angel Prairie Point Inc.

Steven Schooler
Porchlight Inc.

Frank Staniszewski
Madison Development Corp.

Photo by: B. Wolfgang Hoffmann

Frank Staniszewski, president of Madison Development Corp., stands in front of one of the nonprofit's residential properties on East Washington Street. The property is one of a growing number awaiting a decision from the city of Madison on whether or not it can maintain or receive tax-exempt status.

that things had changed."

Before construction was completed, the city of Madison sent out a tax bill. Attic Angel sued, but eventually ended up dropping the case. The uncertainty was too much for the residents, Drescher said.

Consequently, the cost to live at Prairie Point jumped $300 to $400 a month, depending on the size of the unit. Last year, Prairie Point paid $360,000 in property taxes.

"It's really difficult when the rules shift in the middle of the game," Drescher said. "But this isn't a game. People are relying on us. My major concern is still the inequity in all of this. Not all senior centers are being taxed."

Other nonprofit organizations across the city of Madison have found themselves in similar situations. After years of enjoying tax-exempt status on their residential properties, a state Supreme Court ruling has cast a more stringent interpretation on state law.

Consequently, discontent is mounting in Madison's nonprofit community and lawsuits are piling up. Some nonprofit leaders charge that the city is arbitrarily picking and choosing which organizations it will allow to continue to operate without paying taxes on residential properties. And that is breeding resentment.

"There is a difference in being the leader of the charge, which the city clearly is, and maintaining the status quo," said Steven Schooler, the executive director of Porchlight, Inc. "There is no reason they need to be leading the charge."

As nonprofit organizations grapple with how to pay the piper, expansion efforts have been stalled, new construction projects called off, and newly incurred costs passed along to unsuspecting tenants, many of whom are living on fixed incomes or low wages.

Madison Mayor Dave Cieslewicz said he is well aware of the mounting frustration. He and city staffers have twice met with nonprofit officials since August, most recently in mid-November, to discuss the situation. Additionally, the city is working closely with state Rep. Mark Gottlieb to rework numerous components of state law to rectify the situation, he said.

Until that happens, city officials claim they have no wiggle room when it comes

to upholding the law.

"There is not a whole lot of room for interpretation. Our attorney is doing nothing but following the law," Cieslewicz said. "The friction here is not between the city and the nonprofit organizations. We are simply applying the law as it was handed down by the [state] Supreme Court. The friction here is between the nonprofit organizations and the state."

ROOT OF THE PROBLEM

Every even-numbered year, a nonprofit must file a report on its property, essentially reapplying for tax-exempt status. This is why some nonprofit organizations are receiving property tax bills sooner than others.

The overall shift in how the city of Madison is now reviewing such reports is rooted in a lawsuit that was settled roughly five years ago. In that case, the state Supreme Court ruled that a nonprofit must pay taxes on its residential property if its tenants could not apply for, and receive, tax-exempt status on their own.

That means leasing space to another nonprofit is okay. However, renting space to college students or low-income residents may no longer keep a nonprofit off a city's tax base.

"That ruling has generated a lot of anxiety in the nonprofit world," said Michael Kurth, Madison's chief assessor. "It wasn't a major issue before, but now we have legal precedence with the high court ruling strictly on the topic."

Kurth added that there are two other problematic provisions within the law.

First, the law dictates that the money collected from tenants can only be spent for maintenance costs or to pay off a building's construction costs. Money cannot be funneled into other programs or used for new construction projects.

Second, the law puts a 10-acre limit on the amount of property a nonprofit can own within a single municipality. That point led Future Madison to file suit against the city earlier this year.

"The main thing is, if the law doesn't change, there are going to be a heck of a lot more nonprofit organizations that we are going to have issues with," Kurth said.

THE IMPACT

Meridian Group Inc. manages three separate properties for Future Madison. In all, the three affordable housing developments total 34 acres.

"At some point, the city is going to own a lot of properties" — Doug Strub, Meridian Group Inc.

Doug Strub, who manages the properties through Meridian Group Inc., said the buildings were purchased, cleaned up, and rented out under the premise that if it provided a needed commodity for the city – affordable housing – it would not have to pay property taxes.

Earlier this year, Future Madison received a notice it will be taxed on some of its properties. Strub estimated the bills could amount to roughly $180,000. The city lumped the three properties together, giving them tax-exempt status on 10 of their more than 30 acres of property, as required by law. In the past, the city had granted each property a tax exemption.

"We have separate entities that it has treated as three separate entities for years," Strub said. "The city is picking and choosing how this law is applied."

Cieslewicz said the city is working to rework the "10-acre limit" section of the law with Future Madison properties in mind. Specifically, the city would like the law changed so that a nonprofit can receive tax exemptions on up to 30 acres of residential property.

The mayor added that the city also wants the language of the law expanded to broaden the permitted rent-use restrictions and to provide a more clearly defined definition of "low-income" tenants.

"We emphatically disagree with the state law," Cieslewicz said. "Which is why we are working to craft the solutions."

In the meantime, applications are piling up as the city waits to see if lawmakers can find time to address the issue by the end of the legislative session in May.

It doesn't appear such a solution will come from Gottlieb's office. Denise Solie, one of Gottlieb's legislative aids, said there is little chance the lawmaker will intro-

duce a bill in the imminent future.

"At some point, the city is going to own a lot of properties," Strub said. "I think they were waiting to get bailed out (by the legislators), but that got nixed."

THE WAITING GAME

Two property reports in the city's "undecided" pile belong to Madison Development Corp.

It's a roughly $50,0000 decision. Madison Development Corp. had been paying about $36,000 a year for the past 15 years on its 40-unit apartment within a tax incremental finance – or TIF – district on East Washington Avenue.

Frank Staniszewski, the nonprofit's president, said he was bound by the TIF agreement to pay taxes on the property through 2006.

On Dec. 31, 2006, it also repaid a $320,000 note, which was loaned by the city to help finance the project.

"Since we were no longer bound by the TIF agreement, we were able to file for tax exemption under the state statute," he said. "Under the previous interpretation of the statute, we believed the property would qualify for exemption."

Madison Development Corp. also applied for tax exemption on a recent four-unit, $800,000 addition it made on its West Mifflin Street lot.

"We don't want to pay taxes on them, but we are very close to the end of the year, and we haven't heard anything yet," Staniszewski said. "The city is just sitting on them. We were told it was in a state of flux."

The indecision has stalled plans to add 12 more units to its East Washington property. Staniszewski said the only way the nonprofit can absorb the tax bills would be by raising rents.

It currently charges its tenants, most of whom are college students and low-income individuals and families, $100 to $200 a month less than the current market value on its units.

Madison Development Corp. owns roughly 200 housing units around the city and collects $1.5 million annually through rent. Of that amount, more than half is spent on mortgage payments.

SAFE GROUND?

Porchlight Inc. owns and operates 240 housing units across Madison, providing shelter for 300 to 400 households a year. Roughly 90% of those tenants earn $21,000 or less annually, which is 30% less than the median Dane County income, said Schooler, the nonprofit's executive director.

"So far, the city has not challenged us. However, this year we are somewhat concerned," Schooler said.

"I think we are at a lower risk because we are more involved in case management, but the city could come in and and say, 'You are a landlord.' Paying taxes on our properties would be a budget buster for us."

Schooler fears that if the law isn't changed, many low-income housing developments will disappear, forcing more needy people into shelters or to life on the streets. The trend runs counter to every city discussion about the pressing need for affordable or emergency housing. "This situation turns our mission of reducing homelessness on its head," he said. ■